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DOUBLE TAXATION

Taxes on Income

Convention, With Exchange of Notes, Between the UNITED STATES OF AMERICA and JAMAICA

Signed at Kingston May 21, 1980

S9.10:

NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89–497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

". . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

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JAMAICA

Double Taxation: Taxes on Income

Convention, with exchange of notes, signed at Kingston May 21, 1980;
Transmitted by the President of the United States of America to the Senate August 4, 1980 (S. Ex. O, 96th Cong., 2d Sess.);
Reported favorably by the Senate Committee on Foreign Relations December 9, 1981 (S. Ex. Rept. No. 97-40, 97th Cong., 1st Sess.);
Advice and consent to ratification by the Senate, with a reservation and an understanding, December 16, 1981;
Ratified by the President, subject to said reservation and understanding, December 22, 1981;
Ratified by Jamaica December 29, 1981;
Ratifications exchanged at Kingston December 29, 1981;
Proclaimed by the President January 20, 1982;
Entered into force December 29, 1981.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

CONSIDERING THAT:

The Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income was signed at Kingston on May 21, 1980, together with a related exchange of notes, and the Protocol Amending the 1980 Convention, together with a related exchange of notes, was signed at Kingston on July 17, 1981, the texts of which are hereto annexed;

The Senate of the United States of America by its resolution of December 16, 1981, two-thirds of the Senators present concurring

therein, gave its advice and consent to ratification of the Convention, Amending Protocol and related exchanges of notes, subject to the following:

1) reservation that, notwithstanding the provisions of paragraph (5) of Article 13 of the Convention (which relates to the taxation of gains from the alienation of shares of a corporation or of an interest in a partnership, estate, or trust, the property of which consists, directly or indirectly, principally of real property situated in one of the countries), gain derived by a resident of a Contracting State from the alienation or other disposition of an interest in a corporation, or an interest in a partnership, trust, or estate, which has an interest in real property located in the other Contracting State, or the assets of which are considered under the domestic law of that other Contracting State to consist, in whole or in part, of real property, or an interest therein, in that other State, may be taxed by that other State to the extent provided for by its domestic law. In addition, gain derived by a corporation which is a resident of a Contracting State upon the distribution (including a distribution in liquidation or otherwise) of an interest in real property in the other Contracting State (as determined under the domestic law of the other Contracting State) may be taxed by that other Contracting State to the extent provided for by its domestic law.

2) understanding that appropriate Congressional Committees and the General Accounting Office shall be afforded access to the information exchanged under this Convention where such access is necessary to carry out their oversight responsibilities, subject only to the limitations and procedures of the Internal Revenue Code.

The Convention, Amending Protocol and related exchanges of notes were ratified, subject to the aforesaid reservation and understanding by the President of the United States of America on December 22, 1981, in pursuance of the advice and consent of the Senate, and was ratified on the part of the Government of Jamaica;

The instruments of ratification of the Convention, Amending Protocol and related exchanges of notes were exchanged at Kingston on December 29, 1981, and accordingly the Convention and Amending Protocol entered into force on December 29, 1981, effective as specified in Article 29 of the Convention;

NOW, THEREFORE, I, Ronald Reagan, President of the United States of America, proclaim and make public the Convention, Amending Protocol and related exchanges of notes to the end that they be observed and fulfilled with good faith on and after December 29, 1981, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have signed this proclamation and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twentieth day of January in the year of our Lord one thousand nine hundred eighty-two and of the Independence of the United States of America the two hundred sixth.

[SEAL]

RONALD REAGAN

By the President:
ALEXANDER M. HAIG JR.
Secretary of State

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of Jamaica, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

READEX MICRO

ARTICLE 1

Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded -

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of this Convention except paragraph 4 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect.[1]

4. The provisions of paragraph 3 shall not affect:

a) the benefits conferred by a Contracting State under paragraphs 1 b) and 4 of Article 19 (Pensions, etc.), Article 24 (Relief from Double Taxation), Article 25 (Non-Discrimination) and Article 26 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students and Trainees), 22 (Teachers and Researchers) and 28 (Diplomatic Agents and Consular Officers) upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed by a Contracting State.

2. The existing taxes to which this Convention shall apply are:

a) in the United States: the Federal income taxes imposed by the Internal Revenue Code,[2] but

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[1] See art. I of protocol. TIAS 10207; 33 UST.
[2] 68A Stat. 3; 26 U.S.C. §§ 1-8023.

excluding the accumulated earnings tax (except as provided in paragraph 5 of Article 10 (Dividends)) and the personal holding company tax.

b) in Jamaica: the income tax, the company profits tax, and the transfer tax.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. In addition, the Convention shall apply also to a tax imposed by Jamaica in lieu of the income tax or the company profits tax covered by paragraph 2(b). The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

4. For the purpose of Article 25 (Non-Discrimination), this Convention shall also apply to taxes of every kind and description imposed by a Contracting State or a political sub-division or local authority thereof. For the purpose of Article 27 (Exchange of Information and Administrative Assistance), this Convention shall also apply to taxes of every kind imposed by a Contracting State.

ARTICLE 3

General Definitions

1. For the purpose of this Convention, unless the context otherwise requires:

a) the term "person" includes an individual, a partnership, a company, an estate, a trust, and any other body of persons;

b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise or undertaking carried on by a resident of a Contracting State and an enterprise or undertaking carried on by a resident of the other Contracting State;

d) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in the other Contracting State;

e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Jamaica: the Minister responsible for finance or his authorized representative;

f) the term "United States" means the United States of America and when used in a geographical sense includes the States thereof and the District of Columbia, the territorial waters of the United States, and any area outside the States and the District of Columbia which in accordance with international law and the laws of the United States is an area within which the rights of the United States with respect to the natural resources of the seabed and subsoil may be exercised;

g) the term "Jamaica" means the island of Jamaica, the Morant Cays, the Pedro Cays and their Dependencies and when used in a geographical sense includes the territorial waters of Jamaica and any area outside such territorial waters which in accordance with international law and the laws of Jamaica is an area within which the rights of Jamaica with respect to the natural resources of the seabed and subsoil may be exercised;

h) the term "Contracting State" means the United States or Jamaica, as the context requires;

i) the term "national" means:

(i) in relation to the United States -

(a) any individual who is a citizen of the United States;

(b) any company, association or other entity deriving its status as such from the laws of the United States or any political subdivision thereof;

(ii) in relation to Jamaica -

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(a) any individual who is a citizen of Jamaica;

(b) any company, association or other entity deriving its status as such from the laws of Jamaica.

2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires and subject to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Residence

1. For the purposes of this Convention:

a) the term "resident of Jamaica" means:

(i) any person, other than a company, resident in Jamaica for the purposes of Jamaican tax; but in the case of a partnership, estate, or trust, only to the extent that the income derived by such partnership, estate, or trust is subject to Jamaican tax as the income of a resident either in its hands or in the hands of its partners or beneficiaries; and

(ii) a company whose business is managed and controlled in Jamaica.

b) the term "resident of the United States" means:

(i) any person, other than a company, resident in the United States for the purposes of United States tax; but in the case of a partnership, estate, or trust, only to the extent that the income derived by such partnership, estate, or trust is subject to United States tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries; and

(ii) a company created or organised under the laws of the United States or a political subdivision thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, the individual's status shall be determined as follows:

a) the individual shall be deemed to be a resident of the State in which he has a permanent home available; if such individual has a permanent home available in both States, or in neither State, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which the individual's center of vital interests cannot be determined, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if the individual has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, such company shall be considered to be outside the scope of this Convention except for purposes of paragraph 2 of Article 10 (Dividends), Article 25 (Non-Discrimination), Article 26 (Mutual Agreement Procedure), Article 27 (Exchange of Information and Administrative Assistance) and Article 29 (Entry Into Force).

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

5. Where under any provision of this Convention income arising in one of the Contracting States is relieved in whole or in part from tax in that Contracting State and, under the law in force in the other Contracting State a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State during the calendar year such income accrues or the next succeeding calendar year.

ARTICLE 5

Permanent Establishment

For the purposes of this Convention, except as otherwise specified in this Article, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a store or premises used as a sales outlet;

g) a warehouse, in relation to a person providing storage facilities for others;

h) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources;

i) a building site or construction, assembly, installation, or dredging project, or a drilling rig or ship used for the exploration or development of natural resources within a Contracting State, but only if such site, project or activity continues within that State for a period or periods aggregating more than 183 days in any twelve-month period (including the period of any supervisory activity connected therewith), provided that a permanent establishment shall not exist in any taxable year in which such site, project or activity continues within that State for a period or periods aggregating less than 30 days in that taxable year;

j) the furnishing of services, including consultancy, management and technical, and supervisory services, within a Contracting State by an enterprise through employees or other personnel, but only if (i) activities of that nature continue within that State for a period or periods aggregating more than 90 days in any twelve-month period, provided that a permanent establishment shall not exist in any taxable year

in which such services are rendered in that State for a period or periods aggregating less than 30 days in that taxable year; or (ii) the services are performed within that State for a related enterprise (within the meaning of paragraph 3 of Article 9 (Associated Enterprises));

k) the maintenance of substantial equipment or machinery within a Contracting State but only if such equipment or machinery is maintained within that State for a period of more than 120 consecutive days, provided that a permanent establishment shall not exist in any taxable year in which such equipment or machinery is maintained within that State for a period or periods aggregating less than 30 days in that taxable year.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include any one or more of the following:

a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. If an enterprise of a Contracting State does not have a permanent establishment in the other Contracting State under paragraphs 1, 2, and 3, but goods or merchandise are either:

a) subjected to processing in that other Contracting State by another person (whether or not purchased in that other Contracting State); or

b) purchased in that other Contracting State (and such goods or merchandise are not subjected to processing outside that other Contracting State)

then such enterprise shall be considered to have a permanent establishment in that other Contracting State to the extent that all or part of such goods or merchandise is sold by or on behalf of such enterprise for use, consumption, or disposition in that other Contracting State.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person (other than an agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

a) he has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph (subject to the provisions of paragraph 4); or

b) he habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise and additional activities conducted in that State on behalf of the enterprise have contributed to the conclusion of the sale of such goods or merchandise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of independent status within the meaning of this paragraph if the transactions between the agent and the enterprise were not made under arm's length conditions.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably allocable to the income of that permanent establishment whether incurred in the State in which

the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, the provisions of those Articles shall, except as otherwise specifically provided therein, not be affected by the provisions of this Article.

7. For the purposes of this Convention "business profits" means income derived from the conduct of any trade or business including the rental of tangible personal (movable) property and the furnishing of the personal services of another person, but not including income from the rental or licensing of cinematograph films or films or tapes used for radio or television broadcasting and not including income derived by an individual from the performance of personal services either as an employee or in an independent capacity.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

2. For purposes of this Article, profits from the operation in international traffic of ships or aircraft include profits derived from the rental of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) shall be taxable only in that State to the extent used for the transport of goods or merchandise in international traffic.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where an enterprise subject to the taxing jurisdiction of a Contracting State and any other enterprise are related and where such related enterprises make arrangements or impose conditions between themselves which are different from those which would be made between independent enterprises, any income, deductions, credits or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such enterprises may be taken into account in computing the amount of the income subject to tax and the taxes payable by such enterprise.

2. Where a redetermination has been made by a Contracting State to the income of an enterprise in accordance with paragraph 1, then the other Contracting State shall, if it agrees with such redetermination and if necessary to prevent double taxation, make a corresponding adjustment to the income of the related enterprise in such other Contracting State. In the event the other Contracting State disagrees with such redetermination, the two Contracting States shall endeavour to reach agreement in accordance with Article 26 (Mutual Agreement Procedure).

3. For the purposes of this Convention an enterprise is related to another enterprise if either enterprise owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns, directly or indirectly, 10 per cent of the voting stock of the company paying the dividends;[1]

[1] See art. II of protocol. TIAS 10207; 33 UST.

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b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. The income of a Jamaican company derived from the manufacture in Jamaica of approved products under the tax incentive legislation of Jamaica (as in effect on the date of signature of this Convention or as the competent authorities may agree pursuant to Article 26 (Mutual Agreement Procedure)) shall not be subject to the United States accumulated earnings tax. In addition, a company which is a resident of Jamaica shall be exempt from United States accumulated earnings tax if individuals (other than United States citizens) who are residents of Jamaica control, directly or indirectly, throughout the last half of the taxable year more than 75 per cent of the entire voting power in that company.

6. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as

a) such dividends are paid to a resident of that other State; or

b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State

even if the dividends paid consist wholly or partly of profits or income arising in that other State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest.

3. Notwithstanding paragraphs 1 and 2, interest derived by

a) a Contracting State or an instrumentality thereof (including the Bank of Jamaica, the Jamaica Development Bank, the Jamaica Mortgage Bank, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Federal Reserve Banks of the United States, and such other institutions of either Contracting State as the competent authorities may agree pursuant to Article 26 (Mutual Agreement Procedure)); or

b) a resident of a Contracting State with respect to debt obligations guaranteed or insured by that Contracting State or an instrumentality thereof

shall be exempt from tax by the other Contracting State.

4. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, as well as income similar to income from money lent.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a

resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films or films or tapes used for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof but does not include payments for the use of tangible personal property.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services),

as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the person deriving the royalties in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or a local authority thereof, or a resident of that State. However, where the right or property for which the royalties are paid is used within the United States or Jamaica, as the case may be, the royalties shall be deemed to arise in the State in which the right or property is used.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income From Immovable Property (Real Property)) and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base regularly available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State.

4. Jamaica may impose its transfer tax upon the alienation of property in accordance with the Transfer Tax Act as in effect on the date of signature of this Convention.

5. Gains derived by a resident of a Contracting State from the alienation of

a) Stock of a company the value of which is derived

principally from immovable property situated in the other Contracting State; or

b) An interest in a partnership, trust, or estate the value of which is derived principally from immovable property situated in the other Contracting State

may be taxed in the other State. For the purposes of this paragraph, the term "immovable property" includes the stock of a company referred to in sub-paragraph (a) or an interest in a partnership, trust, or estate referred to in sub-paragraph (b).

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

7. Nothing in this Convention shall affect the right of a Contracting State to levy, according to its domestic law, a tax on gains from the alienation of property derived by an individual who is a resident of the other Contracting State and who was a national of the first-mentioned State at any time during the ten-year period immediately preceding the close of the taxable year in which such property was alienated.

ARTICLE 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity may be taxed by that Contracting State. Except as provided in paragraph 2, such income shall be exempt from tax by the other Contracting State.

2. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State, if:

a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;

b) he is present in that other Contracting State for a period or periods aggregating 90 days or more in the taxable year; or

c) the net income derived in the taxable year from residents of that other Contracting State for the performance of such services in the other Contracting State exceeds 5,000 United States dollars or its equivalent in Jamaican dollars.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 19 (Pensions, etc.) and 20 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) (i) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned;

(ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(iii) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State, unless

b) the net income derived in the taxable year by such resident from such employment exceeds 5,000 United States dollars or its equivalent in Jamaican dollars.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment as a member of the regular complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed only in that Contracting State.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State for services rendered in the other Contracting State as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State, except where the amount of such fees and similar payments, not including expenses reimbursed to him or borne on his behalf, do not exceed four hundred United States dollars or its equivalent in Jamaican dollars per day for each day such resident is present in that other Contracting State for the purpose of performing such services.

ARTICLE 17

Investment or Holding Companies

If 25 per cent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then, notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest or royalties. For the purpose of this Article, the source of dividends, interest or royalties shall be determined in accordance with paragraph 3 a), b), or c) of Article 24 (Relief From Double Taxation).[1]

ARTICLE 18

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, not including expenses reimbursed to him or borne on his behalf, from such activities do not exceed four hundred United States dollars or its equivalent in Jamaican dollars per day, or five thousand United States dollars or its equivalent in Jamaican dollars in the taxable year.

[1] See art. III of protocol. TIAS 10207; 33 UST.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person to the extent that it is established that neither the entertainer or athlete, nor any person related thereto, has the right to participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

ARTICLE 19

Pensions, etc.

1. Subject to the provisions of paragraph 2 of Article 20 (Government Service)

a) pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State unless the past employment was performed in the other Contracting State while such person was a resident of that other State, in which case the pension and other similar remuneration may also be taxed in that other State; and

b) social security payments and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State.

2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State unless the annuity was purchased in the other Contracting State while such person was a resident of that other State, in which case the annuity may also be taxed in that other State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State by a resident of the other Contracting State shall be exempt from tax in the other Contracting State. The term "alimony" as used in this paragraph means periodic payments

made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

ARTICLE 20

Government Service

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of, and a national of, that State.

2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State who was a national of that State at the time the services were rendered.

3. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), 18 (Artistes and Athletes) and 19 (Pensions, etc.) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 21

Students and Trainees

1. Payments which a student, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present

in the first-mentioned State for the purpose of his full-time education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments arise outside that State.

2. An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of -

a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or a person related to such resident; or

b) studying at a university or other recognized educational institution in that other State,

shall be exempt from tax by that other Contracting State for a period not exceeding 12 consecutive months with respect to his net income from personal services in an amount not in excess of 7,500 United States dollars or its equivalent in Jamaican dollars for any taxable year.

3. Notwithstanding Article 4 (Residence), an individual to whom paragraph 1 or 2 applies and who immediately before visiting or becoming temporarily present in a Contracting State was a resident of the other Contracting State may elect as an alternative to the provisions of those paragraphs to be treated for all tax purposes of the first-mentioned State including this Convention, as a resident of that State. The election shall apply to all periods during the taxable year of the election and subsequent taxable years during which the individual qualifies under paragraph 1 or 2 and may not be revoked except with the consent of the competent authority of that State.

ARTICLE 22

Teachers and Researchers

1. An individual who visits a Contracting State for a period not expected to exceed two years for the purpose of teaching or engaging in research at a university, college or other recognized educational institution in that Contracting State, and who was immediately before that visit a resident of the other Contracting State, shall be exempt from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose. An individual shall be entitled to the benefits of this paragraph only once.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 23

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits), Article 14 (Independent Personal Services), or Article 18 (Artistes and Athletes), as the case may be, shall apply.

3. Notwithstanding paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

ARTICLE 24

Relief from Double Taxation

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of tax paid or accrued to Jamaica; and, in the case of a United States company owning at least 10 per cent of the voting power of a company which is a resident of Jamaica from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of tax paid or accrued to Jamaica by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to Jamaica, but the credit shall not exceed the limitations

(for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid or accrued to Jamaica the taxes referred to in paragraphs 2 b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. In the case of Jamaica, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of Jamaica (as it may be amended from time to time without changing the general principle hereof), Jamaica shall allow to a resident of Jamaica as a credit against Jamaican tax on income the appropriate amount of tax paid or accrued to the United States; and in the case of a Jamaican company owning at least 10 per cent of the voting power of a company which is a resident of the United States from which it receives dividends in any taxable year, Jamaica shall allow as a credit against Jamaican tax on income the appropriate amount of tax paid or accrued to the United States by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to the United States, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Jamaican tax on income from sources outside of Jamaica) provided by Jamaican law for the taxable year. For purposes of applying the Jamaican credit in relation to tax paid or accrued to the United States the taxes referred to in paragraph 2 a) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

3. For the purposes of the preceding paragraphs of this Article, the source of income or profits shall be determined in accordance with the following rules:

a) dividends described in Article 10 (Dividends) shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State;

b) interest, as defined in paragraph 2 of Article 11 (Interest), shall be deemed to arise in the State specified in paragraph 6 of Article 11;

c) royalties, as defined in paragraph 3 of Article 12 (Royalties), shall be deemed to arise in the State specified in paragraph 6 of Article 12;

d) except for income or profits referred to sub-paragraphs a), b), or c), dividends and interest derived from a company described in paragraph 3 of Article 4 (Residence), and income described in paragraph 3 of Article 23 (Other Income), income or profits derived by a resident of a Contracting State which may be taxed in the other Contracting State (other than solely by reason of citizenship) in accordance with this Convention shall be deemed to arise in that other Contracting State.

ARTICLE 25

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, in accordance with the provisions of paragraph 4 of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

6. Nothing contained in this Article shall be construed -

a) as obliging either Contracting State to grant to individuals not resident in that State any personal allowances, reliefs or credits for taxation purposes which are by law available only to individuals who are so resident; or

b) as preventing Jamaica from charging a higher rate of income tax under section 48 (5) of the Income Tax Act of Jamaica on a life insurance company which is a resident of the United States than on a regionalized life assurance company.[1]

[1] See art. IV of protocol, TIAS 10207; 33 UST.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national. A resident of a Contracting State who has a permanent establishment or a fixed base in the other Contracting State may present his case to the competent authority of either Contracting State.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding the time limits in the domestic law of the Contracting States, provided that, in the case of Jamaica, the taxpayer or the competent authority of the United States gives notice within the time limits in the domestic law of Jamaica to the competent authority of Jamaica that there may be a claim for tax adjustment.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

a) to the attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the allocation of income, deductions, credits, or allowances between persons;

c) to the characterization of particular items of income;

d) to the application of source rules with respect to particular items of income; and

e) to a meaning of a term.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. In cases where this Convention specifies a dollar amount, the competent authorities may agree to a higher dollar amount.

ARTICLE 27

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is in accordance with the Convention and, in addition, such information as is necessary for the prevention of fraud or tax evasion in relation to the taxes covered by the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. Each of the Contracting States shall endeavour to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the present Convention from taxation imposed by such other Contracting State does not enure to the benefit of persons not entitled thereto.

5. Paragraph 4 of this Article shall not impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, public policy, or domestic law.

6. For the purpose of this Article, this Convention shall apply to taxes of every kind imposed by a Contracting State.

ARTICLE 28

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification [1] and its provisions shall have effect:

a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

[1] Dec. 29, 1981.

b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

3. Upon the coming into effect of this Convention, the extension to Jamaica, effective January 1, 1959, of the Convention of 16th April, 1945,[1] between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, as modified by Supplementary Protocols of 6th June, 1946, 25th May, 1954, and 19th August, 1957,[2] shall terminate. The provisions of the 1945 Convention, as amended, will cease to have effect with respect to the United States and Jamaica from the date on which the corresponding provisions of this Convention shall, for the first time, have effect according to the provisions of paragraph 2 of this Article.

ARTICLE 30

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

DONE at Kingston, Jamaica in duplicate this 21st day of May, 1980.

Loren B. Lawrence [3]
Ambassador

FOR THE UNITED STATES OF AMERICA

FOR JAMAICA Hugh Small [4]

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[1] TIAS 4141; 9 UST 1459.
[2] TIAS 1546, 3165, 4124; 60 Stat. 1377; 6 UST 37; 9 UST 1329.
[3] Loren B. Lawrence.
[4] Hugh Small.

[EXCHANGE OF NOTES]

No. 141

Excellency:

I have the honor of commenting on the Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed today. The following understandings were reached between the two Governments.

(1) In the process of negotiating this agreement, the delegation from Jamaica emphasized the necessity of including in the Convention additional provisions which will create incentives to promote the flow of investment to Jamaica.

The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Jamaica. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Jamaica, our Government would be prepared to reopen

the discussions in order to reflect in this Convention provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Government of Jamaica to foreign investors and which are consistent with the income tax policies of the United States, including tax Convention policies, with respect to other developing countries.

(2) In the course of discussions leading to the conclusion of the Convention signed today, the Jamaican delegation expressed its desire that Article 24 (Non-Discrimination) be drafted so as not to prevent Jamaica from imposing special taxes in pursuance of its economic development program, even if these taxes might otherwise violate the provisions of Article 24. The United States delegation explained that it could not agree to such a provision before having the opportunity to examine the specific aspects of such legislation. The United States delegation believes, furthermore, that it would be inappropriate to grant to the competent authorities the power to expand in this way the scope of the Convention by administrative action.

I would like to take this opportunity to assure you, however, that if at some time in the future Jamaica should enact legislation which would contravene the provisions of Article 24 of the Convention, the United States would be prepared to reopen discussions with the

Government of Jamaica to determine whether it would be appropriate to except such legislation from the scope of Article 24.

(3) During discussions involving the Convention, representatives of the Government of Jamaica expressed their concern about whether certain amounts received by the Government of Jamaica from companies extracting and refining bauxite in Jamaica would qualify for the United States foreign tax credit. The Government of Jamaica expressed the belief that such amounts are in satisfaction of liability for the Jamaican company profits tax. The Government of Jamaica also expressed a willingness to consider a revision of its taxation of bauxite income to impose a tax "in lieu of" its company profits tax within the meaning of section 903 of the United States Internal Revenue Code. The Government of Jamaica desired assurance that such an "in lieu of" tax would be covered by the Convention.

The United States delegation discussed with the delegation of the Government of Jamaica the foreign tax credit requirements of sections 901 and 903 of the Internal Revenue Code. The United States delegation agreed that the language now included in paragraph 3 of Article 2 (Taxes Covered) of the Convention covers amounts paid "in lieu of" the company profits tax (or

income tax) of Jamaica, if the Government of Jamaica decides to impose such a tax in the future. It is understood that such an "in lieu of" tax would have to meet the requirements of section 903 of the Internal Revenue Code of 1954 to be covered by the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

Loren E. Lawrence

The Embassy of the United States of America

Kingston, May 21, 1980

MINISTRY OF FINANCE AND PLANNING
30 NATIONAL HEROES CIRCLE.
P.O. BOX 512.
KINGSTON.
JAMAICA

No. 714/09

Telephone No. 92-28890-16

21st May, 1980.

His Excellency Loren Lawrence,
Ambassador of the United States of America.

Excellency:

I have the honor to acknowledge receipt of your note of May 21, 1980 which reads as follows:

"I have the honor of commenting on the Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed today. The following understandings were reached between the two Governments.

(1) In the process of negotiating this agreement, the delegation from Jamaica emphasized the necessity of including in the Convention additional provisions which will create incentives to promote the flow of investment to Jamaica.

The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Jamaica. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Jamaica, our Government would be prepared to reopen the discussions in order to reflect in this Convention provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Government of Jamaica to foreign investors and which are consistent with the income tax policies of the United States, including tax Convention policies, with respect to other developing countries.

(2) In the course of discussions leading to the conclusion of the Convention signed today, the Jamaican delegation expressed its desire that Article 24 (Non-Discrimination) be drafted so as not to prevent Jamaica from imposing special taxes in pursuance of its economic development program, even if these taxes might otherwise violate the provisions of Article 24. The United States delegation explained that it could not agree to such a provision before having the opportunity to examine the specific aspects of such legislation. The United States delegation believes, furthermore, that it would be inappropriate to grant to the competent authorities the power to expand in this way the scope of the Convention by administrative action.

I would like to take this opportunity to assure you, however, that if at some time in the future Jamaica should enact legislation which would contravene the provisions of Article 24 of the Convention, the United States would be prepared to reopen discussions with the Government of Jamaica to determine whether it would be appropriate to except such legislation from the scope of Article 24.

(3) During discussions involving the Convention, representatives of the Government of Jamaica expressed their concern about whether certain amounts received by the Government of Jamaica from companies extracting and refining bauxite in Jamaica would qualify for the United States foreign tax credit. The Government of Jamaica expressed the belief that such amounts are in satisfaction of liability for the Jamaican company profits tax. The Government of Jamaica also expressed a willingness to consider a revision of its taxation of bauxite income to impose a tax "in lieu of" its company profits tax within the meaning of section 903 of the United States Internal Revenue Code. The Government of Jamaica desired assurance that such an "in lieu of" tax would be covered by the Convention.

The United States delegation discussed with the delegation of the Government of Jamaica the foreign tax credit requirements of sections 901 and 903 of the Internal Revenue Code. The United States delegation agreed that the language now included in paragraph 3 of Article 2 (Taxes Covered) of the Convention covers amounts paid "in lieu of" the company profits tax (or income tax) of Jamaica, if the Government of Jamaica decides to impose such a tax in the future. It is understood that such an "in lieu of" tax would have to meet the requirements of section 903 of the Internal Revenue Code of 1954 to be covered by the Convention.

Accept, Excellency, the renewed assurances of my highest consideration."

I have the honor to confirm that the foregoing understandings are in accord with the view of the Jamaican Government and are approved by it.

Accept, Excellency, the renewed assurances of my highest consideration.

Hugh Small
Minister of Finance & Planning.

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